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Attorneys for Plaintiff JENS ERIK SORENSEN,
as Trustee of SORENSEN RESEARCH AND
DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

1 I, J. MICHAEL KALER, declare:

2 1. I am not a party to the present action. I am over the age of eighteen. I
3 have personal knowledge of the facts contained within the following paragraphs, and
4 could and would competently testify thereto if called as a witness in a court of law.

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6 2. At all times relevant herein I have been an attorney for Sorensen
7 Research and Development Trust (“SRDT”), Plaintiff in the above-captioned matter.

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9 3. This declaration is made in support of Plaintiff’s Opposition To
10 Defendant Lexar’s Request Pursuant To Local Rule 7-11 To Continue Hearing On
11 Plaintiff’s Motion For Application Of 35 U.S.C. § 295 Presumption Of Infringement.

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13 4. Attorney Joseph H. Lee is counsel of record for Defendant Lexar
14 Media, Inc. He provided the supporting declaration for Lexar’s motion. He has been
15 the attorney involved in essentially all communications with Plaintiff’s counsel
16 subsequent to filing of the complaint. He appears to be the most knowledgeable
17 attorney at Defendant’s counsel’s firm (Weil, Gotshal & Manges, LLP) as to this
18 case. Neither in Court papers, nor in communication with me has ever asserted that
19 he is unavailable for hearing on June 9, 2008.

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21 5. I checked the website of Weil Gotshal at www.weil.com. The website
22 provides that more than 65 attorneys practice in the Silicon Valley office of Weil
23 Gotshal where both Mr. Lee and Mr. Bobrow are located. Further, Weil Gotshal has
24 1,300 attorneys in 19 offices. There is no evidence or suggestion that 1,299 of those
25 attorneys are unavailable for a routine law and motion hearing on June 9, 2008. The
26 evidence of unavailability submitted only relates to Mr. Jared Bobrow.

27
28 6. It is true that I accidentally filed the pending motion on April 11, 2008

1 before remembering to call defense counsel to confirm the available date, but then
2 called the same day as the filing. The Court's electronic service shows that it sent
3 copies of the motion not only to Mr. Bobrow, but also to Judi Tallett of defense
4 counsel's firm. So, in addition to my voicemail, Defendant's counsel had two other
5 sources of information of the scheduled hearing date on April 11.

6

7 7. Defense counsel waited five days after receiving the voicemail and the
8 electronic service of the motion before Mr. Lee first responded to my phone call.

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10 8. When Mr. Lee called me on April 16 to object to the hearing date, the
11 July 7, 2008 was the last motion hearing date available on the Court's calendar prior
12 to September. I went through the Court's listing of available hearing dates and
13 offered Mr. Lee each date from June 9 up to July 7 for consideration and Mr. Lee
14 verbally rejected each and every one. It was only after I made it clear that I was not
15 prepared to accept a delay into September and thus, could not even consider moving
16 the hearing to any date later than the July 7 date that Mr. Lee reluctantly agreed to
17 ask Mr. Bobrow if the July 7 date was acceptable.

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19 9. I heard nothing back from Mr. Lee or anyone else representing Lexar
20 until April 22, a full eleven days after filing of the motion. At that point, Mr. Lee
21 sought to take the last possible date prior to September. By this time, I had
22 reasonably concluded that the continued silence of Defense counsel was acceptance
23 of the pending hearing date.

24

25 10. Defendant has attacked my inadvertent failure to speak with Mr.
26 Bobrow prior to filing the motion by asserting that Mr. Bobrow complied with
27 obtaining scheduling clearance prior to filing Lexar's motion for stay. This is not
28 accurate. Mr. Bobrow did not confer with me about the hearing date actually set on

1 Lexar's motion for stay. Rather, Mr. Bobrow obtained approval of a different date,
2 then changed the date at the time of filing, before communicating the change to me.

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4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing paragraphs are true and correct to the best of my own
6 personal knowledge.

7 DATED this Thursday, May 01, 2008.
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10 /s/ J. Michael Kaler
11 J. Michael Kaler, Esq.
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